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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/580,820

08/20/2008

John Vivian Woodley

A-10084

7403

20741

7590

12/07/2010

Welsh Flaxman & Gitler
2000 Duke Street , Suite 100
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EXAMINER

WEBB, SARAH K

ART UNIT

PAPER NUMBER

3731

MAIL DATE

DELIVERY MODE

12/07/2010

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/580,820	Applicant(s) WOODLEY, JOHN VIVIAN	
	Examiner SARAH WEBB	Art Unit 3731	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 November 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3,5-7,9 and 11 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3,5-7,9 and 11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>11/30/2010</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 11/30/2010 has been entered.

Information Disclosure Statement

2. The information disclosure statement filed 11/30/2010 fails to comply with 37 CFR 1.98(a)(2), which requires a legible copy of each cited foreign patent document; each non-patent literature publication or that portion which caused it to be listed; and all other information or that portion which caused it to be listed. It has been placed in the application file, but the information referred to therein has not been considered.

Response to Arguments

3. Applicant's arguments with respect to claims 1 and 11 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 5 and 11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Regarding claim 5, it is unclear whether Applicant is claiming the groups of apertures in the alternative form due to the term "or" in line 3. The groups of apertures are first listed in the alternative, but subsequent limitations are directed towards all three groups being included in the same device. Therefore, it is also unclear how many groups of apertures are required by the claim.

Claim 11 is also indefinite because it is unclear whether Applicant is claiming features in the alternative or inclusively. At (c), claim 11 first requires a plurality of pressure points. Beginning on line 9, claim 11 requires "at least a first pressure point... a second pressure point... OR a third pressure point." In order to meet the "at least one" language here, only one pressure point would be required. Therefore, it is unclear how many pressure points are required by the claim language. Claim 11 is further indefinite because section (d) lists the groups of apertures in the alternative and subsequently recites limitations directed towards all three groups being included in the same device. It is also unclear how many groups of apertures are required by the claim.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-3, 5-7, 9, and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent No. 5,099,829 (Wu) in view of US Patent No. 3,279,468 (Le Vine), and further in view of US Patent No. 4,233,966 (Takahashi).

Wu discloses a therapeutic mask with eye apertures, a nose bridge, and a securing member (11). The inside surface of the mask includes a plurality of pressure points (2) in locations that correspond with known acupressure points of the face. As Wu clearly explains and illustrates in Figure 5, these acupressure points are located at various positions between and below the eyes (see column 2, line 55 - column 3).

Wu fails to form the points so that they are selectively removable and attachable to the mask. Le Vine discloses another therapeutic face mask with pressure points located at various locations that correspond with known acupressure points on the face and around the eyes. Le Vine teaches that the mask should include a group of apertures (39) in the mask over the area of each acupressure location and the pressure points (33) should be selectively removable and attachable to the mask. These features provide a means for adjusting the position of the pressure points to accommodate variations in faces of different wearers (column 9, lines 33-45). It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify

Art Unit: 3731

the Wu mask to include the adjustability means including a plurality of groups of apertures and selectively removable pressure points taught by LeVine, in order to provide a mask that can be customized to the individual features of each user.

The term “passive” refers to a physical state or intended use of the device, which is not given full patentable weight. Any of the pressure points of the modified Wu mask are in a passive state while electrical energy is not being applied. Since the mask is *capable of* being placed on a user's face while in the passive state and the pressure points would function to apply pressure to the face in this state, the modified Wu mask meets this limitation.

Wu forms the pressure points connected to one another by member (27) and to the mask body by bottom flange (28). Takahashi discloses another acupressure device with pressure points that are selectively moveable to different openings in the device's body (10) (see summary in column 1, line 55 – column 2, line 20). Takahashi teaches that the pressure points can be made as solid, substantially non-compressible bodies (12) with stems (14), or mounting portions, that fit easily within the openings. It would have been obvious to one of ordinary skill in the art at the time the invention was made to further modify the Wu device so that the pressure points comprise incompressible knobs with mounting portions, as taught by Takahashi, in order to provide pressure points that are easily adjusted by the user.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to SARAH WEBB whose telephone number is (571) 272-5749. The examiner can normally be reached on 9:00am - 5:00pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anhtuan Nguyen can be reached on (571) 272-4963. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/S. W./
Examiner, Art Unit 3731

/Kathleen Sonnett/
Examiner, Art Unit 3731